

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CIVIL APPLICATION NO. 11 OF 2021

(Originating from Civil Appeal No. 14/2020 of High Court of Tanzania at Mtwara)

DAVID SANGAAPPLICANT

VERSUS

ANDREW PETER MTUMUSHARESPONDENT

RULING

24th Aug. & 5th Oct., 2021

DYANSOBERA, J.:

The applicant has filed the instant application under section 95 and O. IX rule 9(1) of the Civil Procedure Code [Cap. 33 R.E. 2002] (sic) praying for restoration of Civil Appeal No. 14 of 2020 which was dismissed for want of prosecution on 18th March, 2021. The application is by way of chamber summons supported by an affidavit sworn by David Sanga, the applicant.

The respondent Andrew Peter Mtumusha has, by way of a counter affidavit, resisted the application.

After the documentation process was completed the applicant, on 24th day of August, 2021, prayed the application to be heard in writing. The respondent conceded to the applicant's prayer. The court granted the prayer and ordered the application to be heard by way of written submissions in accordance with the following time schedule:-

- 1. The applicant to file his written submission in chief by 7.9.2021.**
- 2. The respondent to file his written reply by 21.9.2021**
- 3. The rejoinder to be filed by 28.9.2021**

The ruling was set for delivery for 5.10.2021. Up to the present no any written submission has been filed as ordered. This amounts to non-appearance and failure to prosecute.

In the case of **P 3525 LT Idahya Maganga Gregery V. The Judge Advocate General Court Martial**: Criminal Appeal No. 2 of 2002 (unreported), the court held:-

" It is now settled in our jurisprudence that the practice of filing written submissions is tantamount to a hearing and, therefore, failure to file submissions as ordered is equivalent to non- appearance at hearing or want of prosecution. The attendant consequences of failure to file written submissions are similar to those of failure to appear and prosecute or defend, as the case may be..."

Earlier, the court in the case of **Olam Tanzania Limited V. Halawa Kwilabya**, DC Civil Appeal NO. 17 of 1999 had this to say:-

"Now what is the effect of a court order that carries instructions which are to be carried out within a pre- determined period? Obviously such an order is binding. Court orders are made in order to

be implemented, they must be obeyed. If orders made by courts are disregarded, or if they are ignored, the system of justice will grind to a halt will be so or it chaotic that everyone will decide to do only that which is convenient to them. In addition, an order for filing submission is part of hearing. So if a party fails to act within the prescribed time he will be guilty of indilligence in like measure as if he defaulted to appear. This should not be allowed to occur. Courts of law should always control proceedings, to allow such an act is to create a bad precedent and in turn invite chaos.”

In the instant case the applicant has failed to file his written submission as ordered by this court on the fixed date. With the authorities above, this is tantamount to not only non – appearance but also failure to prosecute the application.

On the basis of the above discussion and the position of law, I dismiss this application for want of prosecution.

No order as to costs is made.




W. P. Dyansobera

Judge

5.10.2021

This ruling is delivered under my hand and the seal of this Court on this 5th day of October, 2021 in the presence of the respondent but in the absence of the applicant.




W.P. Dyansobera

Judge

5.10.2021